

**REMARKS**

Claims 5-37 are pending in this application. By this amendment, claims 5, 10, 24, 25, 35 and 37 are being amended. No claims are being cancelled or added. No new matter has been added.

In the Office Action, claims 5-8, 11, 18-30, 32-35 and 37 were rejected under 35 U.S.C §102(e) as being anticipated by U.S. Patent No. 6,655,260 to Lazaris et al. ("Lazaris"), and claims 5-17, 21-23, 25-31 and 33-37 were rejected under 35 U.S.C §102(e) as being anticipated by U.S. Patent No. 6,490,966 to Mariller et al. ("Mariller"). In view of the above amendments, the claims are believed to be in condition for allowance.

The courtesy extended by Examiner Alexander during the telephone interview of June 14, 2006 with Applicant's representatives Eric L. Amundsen and Robert E. Hunt is gratefully acknowledged. During the interview, the cited references of Lazaris and Mariller were discussed with respect to the independent claims. The substance of the discussions during the interview is incorporated into the following remarks.

**Rejections Over Lazaris****Claims 5-8, 11, 18-30, 32-34 and 37**

Amended independent claim 5, recites, among other features, a receptacle, having an opening to receive a beverage cartridge, that is movable relative to the housing between a vertical position and a stationary, inclined position in which the receptacle is arranged to receive and hold a beverage cartridge. Amended independent claim 25 is directed to a method for forming a beverage, and recites, among other features, providing a beverage cartridge in a receptacle while the receptacle is in a forwardly inclined position. The brewer of Lazaris tilts a housing (28) including a cartridge holder as part of the process of releasing a used beverage cartridge (50) rather than for receiving and holding a cartridge. As discussed during the interview, Lazaris does not teach or suggest a receptacle which is movable to a stationary, inclined position in which the receptacle is arranged to receive and hold a beverage cartridge, nor does Lazaris teach or suggest providing a beverage cartridge in a receptacle while the receptacle is in an inclined position. The cartridge holder of

Lazaris is tilted from vertical only to dump a spent cartridge, and is not tilted to hold a beverage cartridge. Moreover, the cartridge holder is not held in a stationary, inclined position for any reason. Accordingly, for at least these reasons, it is respectfully requested that the rejections of independent claims 5 and 25 over Lazaris be withdrawn.

Each of claims 6-8, 11, 18-24 and 37 depends either directly or indirectly from independent claim 5, and the withdrawal of these rejections is also respectfully requested for at least the same reasons provided above for claim 5.

Each of claims 26-30 and 32-34 depends either directly or indirectly from independent claim 25, and the withdrawal of these rejections is also respectfully requested for at least the same reasons provided above for claim 25.

#### Claim 35

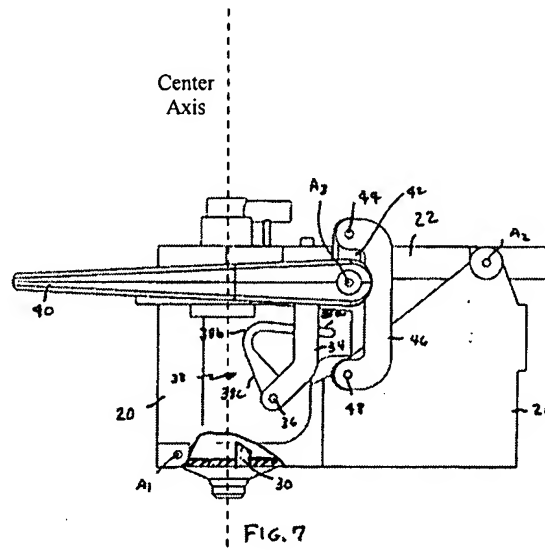
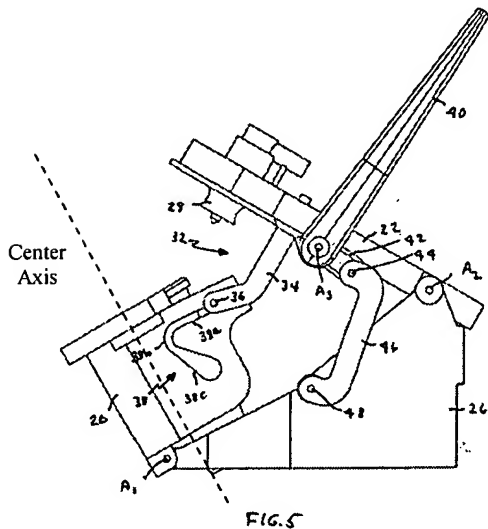
Amended claim 35 recites, among other features, a lid rotatable relative to a housing about a second axis between open and closed positions. As discussed during the interview, the lid (40) of Lazaris moves vertically along vertical tracks (42, 44) within the brewing chamber (20) without rotation relative to the brewing chamber. Thus, Lazaris does not teach or suggest a lid that is rotatable relative to a housing. Accordingly, withdrawal of the rejection of claim 35 over Lazaris is respectfully requested for at least this reason.

#### Rejections Over Mariller

##### Claims 5-17, 21-23, 25-31, 33, 34 and 37

Amended claim 5, recites, among other features, a receptacle having an opening, wherein the receptacle opening has a center axis extending from a center of the opening. The claim further recites a lid movable relative to a housing between open and closed positions, the lid cooperating with the receptacle in the vertical position to facilitate formation of a beverage. The claim further recites that when the receptacle is in the vertical position, the center axis extends vertically and intersects the lid, and when the receptacle is in an inclined position, the center axis does not intersect the lid. Amended claim 25 is directed to a method for forming a beverage and

recites moving a receptacle from a vertical position, in which a center axis of a receptacle opening extends vertically and intersects a lid in a closed position, to an inclined position in which the center axis does not intersect the lid in an open position. For example, as shown below in Figures 5 and 7 of the application with a center axis of the receptacle opening superimposed on the figures, the center axis does not intersect with lid 22 when receptacle 20 is in an inclined position, and the center axis does intersect with lid 22 and extends vertically when receptacle 20 is in a vertical position.



As discussed during the interview, Mariller does not teach or suggest that a center axis of a receptacle opening does not intersect a lid when the receptacle is in an inclined position and extends vertically and intersects a lid when the receptacle is in a vertical position. The clamping elements of Mariller are oriented such that any center axis of a clamping element opening that does not intersect the other clamping element when the clamping element is in an inclined position does not also extend vertically and intersect the other clamping element when the clamping element is in a vertical position. Accordingly, it is respectfully requested that the rejections of claims 5 and 25 over Mariller be withdrawn for at least this reason.

Each of claims 6-17, 21-23 and 37 depends either directly or indirectly from independent claim 5, and the withdrawal of these rejections is also respectfully requested for at least the same reasons provided above for claim 5.

Each of claims 26-31, 33 and 34 depends either directly or indirectly from independent claim 25, and the withdrawal of these rejections is also respectfully requested for at least the same reasons provided above for claim 25.

Claims 35 and 36

Amended claim 35 recites, among other features, a lid rotatable relative to the housing about a second axis between open and closed positions. As was suggested by the Examiner during the interview, independent claim 35 has been amended to recite that the lid is rotatable with the position of the second axis remaining stationary relative to the housing.

Because each clamping element of the Mariller system rotates about an axis that moves relative to the housing, Mariller does not teach or suggest a lid that is rotatable with the position of the second axis remaining stationary relative to the housing. Accordingly, it is respectfully requested that the rejection of claim 35 over Mariller be withdrawn for at least this reason.


Claim 36 depends directly from independent claim 35, and the withdrawal of this rejection is also respectfully requested for at least the same reasons provided above for claim 35.

**CONCLUSION**

If the Examiner believes, after this Response, that the application is not in condition for allowance, the Examiner is requested to call the undersigned at the telephone number listed below. If this response is not considered timely filed and if a request for an extension of time is otherwise absent, any necessary extension of time is hereby requested. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed fee, please charge any deficiency to Deposit Account No. 23/2825. No new matter has been added.

Dated: June 23, 2006  
x07/28/06x

Respectfully submitted,

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